

TO: Chairman and Members

DATE: January 7, 2014

**SUBJECT: Emergency Regulation Amendments to
Title 15 Regulations on Local Jail Construction
Financing Program. Requesting Approval.**

AGENDA ITEM: A

**ACTION: X
INFORMATION:**

RESOURCE PERSON: Ginger Wolfe

Summary:

In July 2013 the Board of State and Community Corrections (BSCC) released to the field the Senate Bill 1022 (SB 1022), Adult Local Criminal Justice Facilities Construction Financing Program, Request for Proposals (RFP). BSCC staff, working with other state stakeholders, revised the Title 15, Local Jail Construction Financing Program regulations. Due to the emergent circumstances of these regulations in relation to the conditional awards scheduled to be made by the Board at its January 16, 2014 meeting, these regulations have already been submitted to the Office of Administrative Law (OAL) for immediate publishing upon Board approval. This agenda item requests approval of the emergency draft revisions to the regulations and publishing by OAL.

Background:

On June 27, 2012, SB 1022 (Chapter 42, Statutes of 2012) became law authorizing \$500 million in state lease-revenue bond financing for the acquisition, design and construction of adult local criminal justice facilities. The implementation of SB 1022 legislation faced several difficulties.

On October 26, 2012, an Executive Steering Committee (ESC) was convened to discuss interpretations of the statute and essential aspects of how the BSCC would award financing. On January 25, 2013, the Office of the Attorney General issued an opinion ruling that the SB 1022 ESC members were in violation of Section 1090, Conflict of Interest Prohibition.¹ The BSCC assembled a modified ESC panel comprised of individuals not having any financial interest in SB 1022 (complying with the requirements in Section 1090 of the Government Code). On March 18, 2013 the ESC held their initial meeting to discuss elements of the RFP. The RFP was subsequently approved by the Board on July 22, 2013.

One of the BSCC's responsibilities described in SB 1022 is the drafting of regulations that explain the requirements of that legislation including BSCC's role in administering the \$500 million in construction financing. SB 1022 contains an urgency clause that emphasizes the critical need for public safety, making it necessary to expedite this regulation development process. This accelerated process will be accomplished through an emergency filing with OAL.

¹ On June 27, 2013, Penal Code 6025.1 was amended to include language prohibiting BSCC ESC members from having any financial interest in a bond financing transaction, resolving the issue of conflict of interest as it relates to BSCC ESC's.

With assistance from the Department of Finance, BSCC staff has revised the draft emergency adoptions and amendments to the Local Jail Construction Financing Program regulations. They are attached for your review (Attachment A).

Upon OAL approval, the regulations will be published and temporarily effective for 180 days (the end of this period is approximately July 15, 2014). During that time BSCC staff will send the regulations out for a 45-day public comment period. Following the public comment period, a public hearing will be held in Sacramento. (If an additional public comment period is needed, it will be scheduled.) Staff will bring these regulations to a future Board meeting for approval and anticipates submitting the certificate of compliance for the rulemaking package to the OAL before July 15, 2014.

Recommendation/Action Needed:

Staff recommends:

1. The Board has determined that the proposed regulations are necessary to address an emergency as defined in Government Code section 11342.545².
2. The Board approve the draft emergency adoptions and amendments to the regulations.
3. The Board approve the publishing of the emergency adoptions and amendments to the regulations by the Office of Administrative Law.

² Section 11342.545 of the Government Code states: "Emergency' means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare."